PRECEDENTIAL VALUE

Federal Public Defender's Office Southern District of Ohio

Deborah L. Williams, Federal Public Defender
Editors Richard Monahan, Kevin Schad & Jacob Cairns
Issue 67 July-August 2018

This publication is an outline of selected published cases from the Supreme Court and Sixth Circuit that may impact the practice of federal criminal law in the courts of the Sixth Circuit. Cases may be accessed electronically by clicking on any case name, which is hyperlinked to the court's official website. A combined outline of all cases published in Precedential Value since January 2015 may be found on our website at www.fpd-ohs.org.

I. Sentencing Issues

B. Guideline issues

2B1.1 – Intended Loss

U.S. v. Bertram, 17-6527 (8/20/18)

The defendants ran a drug testing lab. They were convicted of health care fraud for submitting bills to a private insurer for lab work that was not completed until 7-10 months after the urine tests were taken. At sentencing, the district court determined the loss to the private insurer under USSG § 2B1.1 based on the "intended loss." In so doing, the district court applied the presumption that intended loss is "the amount billed [by the defendant] to a government health care program." On appeal, the court held that the defendant had introduced no evidence to rebut the presumption that the amount billed by the defendants to the insurer was a proper gauge of the intended loss. Further, the court ruled that the presumption technically only applies to the defrauding of a "government health care program" and not a private insurer, but since the defendant did not argue this distinction either in the district court or on appeal, the court upheld the sentence.

3B1.1(a) – Leadership Role

U.S. v. Sexton, 17-5743 (7/5/18)

The defendant was the owner of a company and was convicted of running a bank fraud conspiracy. At sentencing, the district court imposed a four level sentence enhancement under USSG § 3B1.1(a) because the defendant was the leader of a criminal activity involving five or more participants. On appeal, the court held that the leadership enhancement was appropriate. In order to apply the enhancement, the district court need only find that the defendant was the leader of one or more individuals in an enterprise that involved five or more participants. The court found that the defendant had direct supervisory authority over the office manager at his company who prepared false documents for him at his direction. Further, the defendant had a right as the owner to a larger share of the proceeds of the crime. Accordingly, the court ruled that the four level leadership enhancement was proper and the sentence was affirmed.

4A1.2(f) – Diversionary Dispositions

U.S. v. Sexton, 17-5743 (7/5/18)

The defendant was convicted of participating in a conspiracy to commit bank fraud. The district court applied a one level criminal history increase because of the defendant's prior guilty plea to battery out of California and a two level increase because the defendant was on probation for the offense during the time period of the federal bank fraud conspiracy. The defendant ultimately received a diversionary dismissal of the battery charge when he completed the probationary period. On appeal, the court held that application of one criminal history point under USSG § 4A1.2(f) was appropriate even though the case was ultimately dismissed through the diversion program. Further, because the defendant began the commission of the federal conspiracy offense while still under supervision for the battery charge (even though it was ultimately dismissed), he was also subject to an additional two level criminal history increase for being under a "criminal justice sentence" at the time of the offense. Accordingly, a full three level criminal history score increase was appropriate and the sentence was affirmed.

C. Procedural matters

Illegal Sentences

U.S. v. Nichols, 17-5580 (7/30/18)

The defendant was convicted of being a felon in possession of a firearm and sentenced as an ACCA. While in prison, he was convicted of a conspiracy to distribute heroin that was imposed to run consecutively to his ACCA sentence. The Supreme Court then rendered its decision in Johnson and the defendant filed a habeas petition. The district court agreed that the defendant was no longer an ACCA after Johnson, but instead of imposing a guideline sentence within the 0-10 year range for the felon in possession charge, the court instead simply imposed a sentence of time served. At that point, the defendant had served 12 years toward his ACCA sentence. On appeal, the court held that the district court had imposed an illegal sentence. The court found that the statutory maximum sentence for the felon in possession conviction was 10 years, so when the district court imposed a sentence of time served, it had in effect imposed a 12 year sentence, which was above the statutory maximum. The court ruled that sentences above the statutory maximum are illegal and trigger "per se reversible plain error." Accordingly, the case was remanded for resentencing.

D. Recidivism enhancements

18 USC § 924(e) – ACCA

U.S. v. Farrad, 16-5102 (7/17/18)

The defendant was convicted of being a felon in possession of a firearm. At sentencing, the district court determined that he was an armed career criminal based on eight prior federal drug trafficking convictions that were part of a single drug conspiracy. The defendant argued on appeal that the eight convictions should be counted as a single prior offense. On appeal, the court held that the eight prior drug trafficking convictions were offenses "committed on occasions different from one another" under the ACCA because each sale of drugs had a definite beginning and ending point, and the defendant clearly could have withdrawn from the crime between each sale. Further, the court held that the offenses still counted separately even though they were charged in the context of a single ongoing conspiracy. Accordingly, the defendant's sentence was affirmed.

U.S. v. Goldston, 17-5540 (7/5/2018)

The defendant was convicted of being a felon in possession of a firearm. At sentencing, the district court determined that he was an armed

career criminal based on five prior Tennessee convictions for "sale or delivery" of a controlled substance. At issue on appeal was the meaning of the term delivery under Tennessee law. The court held that the term delivery of a controlled substance had the same meaning as the term "distribution" in the ACCA's definition of "distribution of a controlled substance" and thus the defendant's prior Tennessee convictions were countable as predicates for the ACCA. Accordingly, the defendant's sentence was affirmed.

Raines v. U.S., 17-1457 (7/31/18)

The defendant was convicted of being a felon in possession of a firearm and sentenced as an armed career criminal. After the Supreme Court's decision in Johnson, he filed a habeas petition and claimed that his prior conviction for 18 USC § 894(a)(1) for collecting credit through extortionate means was not an ACCA predicate. The district court denied the petition and the defendant appealed. The court first held that § 894(a)(1) was not divisible, and thus the categorical approach applied to the determination of whether it was a violent felony. Second, the court held that § 894 was not a violent felony under the force clause. Under the statute, a defendant may be convicted where the defendant uses "violence or other criminal means to cause harm to the person, reputation or property of any person." The court found that this provision did not require the kind of violent force necessary for the force clause of the ACCA. Third, the court held that the extortion offense was not a generic extortion for purposes of the enumeration clause of the ACCA. The court ruled that generic extortion as used in the enumeration clause requires "obtaining something of value from another with his [or her] consent induced by the wrongful use of force, fear, or threats." The court found that § 894 was non-generic because it covered more than consensual takings of property and that it did not require that the defendant actually obtain something of value (as opposed to an extension of credit for a third party). Thus, the court found that § 894 criminal liability was broader than generic extortion. Accordingly, the § 894 extortion conviction was not a violent felony, the defendant was not properly categorized as an armed career criminal, and his sentence was vacated.

Davis v. U.S., 17-5659 (8/16/18)

The defendant was convicted of being a felon in possession of a firearm and he was sentenced as an armed career criminal. After the Supreme Court's decision in Johnson, the defendant filed a habeas petition and argued that his Tennessee conviction for reckless aggravated assault was not a violent felony. The district court granted the habeas petition and the government appealed. The court first held that, based on its prior decision in U.S. v. Verweibe, recklessness was a sufficient mens rea for a conviction to qualify as a violent felony under the force clause of the ACCA. Second, the court ruled that the record from the prior conviction was clear that the defendant was in fact convicted of reckless assault. He was charged with attempted first degree murder, but after a bench trial he was convicted of the lesser included offense of aggravated assault. The court found that the reckless assault provision of the aggravated assault statute was the only possible lesser included offense that the defendant could have been convicted of based on the trial court's findings. Accordingly, the district court's grant of habeas relief was reversed and the ACCA sentence was reinstated.

USSG § 2K2.3–Explosives–Crime of Violence

U.S. v. Maynard, 17-6057 (7/3/18)

The defendant was convicted of possession of an explosive as a felon, pursuant to 18 USC § 842(i)(1). At sentencing, the district court increased the defendant's sentence under USSG

§ 2K2.3 because he had a prior Kentucky conviction on his record for second-degree assault under extreme emotional disturbance. On appeal, the court held that the Kentucky offense was a crime of violence under the guidelines because it required that a defendant intentionally cause a physical injury to another. Further, the court held that, although the Kentucky statute allowed the defendant to mitigate the sentence by proving that he acted under the influence of extreme emotional disturbance, this feature of the law did not negate the required intent element of the statute. Thus, the offense was a crime of violence and the defendant's sentence was affirmed.

4B1.1 – Career Offender

U.S. v. Jackson, 17-4258 (8/24/18)

The defendant was convicted of armed bank robbery. After an appeal and habeas petition, the district court sentenced the defendant as a career offender by applying the guideline in effect at the time of his original sentencing, which included the "residual clause." On appeal, the court first held that a district court on a remand for resentencing must apply the sentencing guideline manual that was in effect at the time of the original sentencing hearing. Second, the court held that the Supreme Court's decision in Beckles v. U.S. required courts to continue to apply the "residual clause" of the previous guideline manual to the determination of whether prior offenses qualified as crimes of violence. Under the "residual clause," a prior offense was countable as a crime of violence if it created a substantial risk of serious physical injury to the person of another. The court found that the defendant's Ohio attempted robbery and aggravated robbery convictions were properly considered crimes of violence under the residual clause and accordingly the defendant's sentence was affirmed.

E. Fine/Restitution/Forfeiture

Forfeiture

U.S. v. Bradley, 17-5725 (8/1/18)

The defendant was convicted of participating in a drug conspiracy and a conspiracy to launder the proceeds. At sentencing, the district court imposed a million-dollar forfeiture order jointly and severally with the codefendants in the case. On appeal, the court held that, pursuant to the Supreme Court's decision in Honeycut v. U.S., criminal forfeiture may not be ordered jointly and severally among codefendants. Because the district court's order did not support a finding that the defendant personally obtained a million dollars from the conspiracy, the case had to be remanded. The court noted it is an open question in the Sixth Circuit whether the Sixth Amendment requires that the jury, as opposed to the district judge, determine the amount of forfeiture. The court held that the district court would need to decide this question in the first instance on remand.

U.S. v. Sexton, 17-5743 (7/5/18)

The defendant was convicted of participating in a conspiracy to commit bank fraud. As a result, the government obtained a forfeiture of 2.5 million dollars, pursuant to 18 USC § 981(a)(1)(C). This dollar amount was based on the amount of money obtained by the conspiracy as a whole. On appeal, the court held that the Supreme Court's decision in Honeycut v. U.S., which limited forfeiture liability to the amount the defendant personally obtained, was inapplicable to the case because the government was seeking forfeiture under a different statute. In Honeycut, the government sought forfeiture under 21 USC § 853, which limits forfeiture to moneys that the "the person obtained." The court emphasized that no such limitation exists in the wording of § 981(a)(1)(C). Accordingly, the forfeiture judgment was affirmed.

III. Evidence

B. Articles VI-VII – Witness/Expert

702 – Expert Testimony

U.S. v. Mallory, 17-3500 (8/30/18)

At the defendant's trial for fraud and identity theft, the government presented an expert handwriting examiner to testify that the signature of a decedent on a will was not actually his signature. On appeal, the defendant challenged the admissibility of the handwriting expert testimony. The court held that, although handwriting analysis is not properly characterized as a science, it is nonetheless a proper subject of expert testimony. The witness, an IRS National Forensic Examiner, was properly qualified based on his years of experience and training. Further, the witness attested to using proper and reliable methods of analyzing the handwriting, including reviewing 91 known samples of the decedent's signature in making the comparison. Finally, the expert's conclusions about the handwriting sample were peer reviewed by another examiner in the IRS office. As such, the court found that the testimony was properly admitted.

U.S. v. Farrad, 16-5102 (7/17/18)

The defendant was charged with being a felon in possession of a firearm based solely on pictures from his Facebook account of him holding a gun. At trial, the government presented the testimony of an officer/expert witness in an attempt to establish the time period in which the pictures were taken. The expert testified that, in his years of experience in investigating social media for evidence, criminals tended to post pictures of themselves committing crime immediately after the crime was committed. On appeal, the court held that the evidence was not proper expert testimony under FRE 702. The court found that although the witness could arguably have been qualified in the area based on his years of experience investigating social media type offenses, the record was bereft of any evidence establishing that he had based his opinion on reliable data or that he had applied a reliable methodology in forming his conclusions. In short, the court ruled that the government failed entirely to establish that the expert had any reliable basis to answer the questions about the characteristics of social media criminal behavior. The court also questioned whether social media criminal behavior was actually a legitimate field for expert testimony at all. Thus, the admission of this testimony was error. Nonetheless, the court held that its admission was harmless because neither the trial attorney nor appellate counsel argued that the government failed to prove the date of the offense as alleged in the indictment. To the contrary, appellate counsel actually stipulated that the government had proved the date of the offense sufficiently at trial (when it clearly had not). Accordingly, the conviction was affirmed.

D. Discovery/Miscellaneous

901(a)/902 - Authentication

U.S. v. Mallory, 17-3500 (8/30/18)

At the defendant's trial for fraud and identity theft, the government presented a document that was an unexecuted power of attorney that was purportedly created by the defendant. The district court admitted the document and the defendant argued on appeal that it was not properly authenticated. The court held that in order to authenticate a document under FRE 901(a), the proponent must merely offer evidence "sufficient for the factfinder to conclude that the document is what it is claimed to be." The court found that the document was properly authenticated by the following: (1) the government obtained the document from the defendant's exhibit book; (2) the defendant himself testified that his secretary

"could have" prepared the document; and (3) the document bore the defendant's signature line. Accordingly, the court held that the document was properly admitted.

U.S. v. Farrad, 16-5102 (7/17/18)

The defendant was charged with being a felon in possession of a firearm based solely on pictures from his Facebook account of him holding a gun. At trial, the government introduced the pictures through use of a certification from a Facebook records custodian and the district court found that the records were self-authenticating as business records. Upon his conviction, the defendant appealed the admissibility of the pictures. The court first held that the records were not self-authenticating as business records. The court ruled that the content of information communicated on Facebook by users does not become admissible merely because it is retained by Facebook in its normal course of business. Thus, things like pictures or records of chats are not admissible as Facebook business records. As such, the district court erred in this finding. Nonetheless, the court held that the pictures were authenticated under FRE 901(a) because the pictures clearly depicted what the proponent claimed it to be; namely, the defendant in possession of a firearm. The government made this showing through the clarity of the pictures themselves, testimony by an expert that the gun appeared to be a real firearm, and identification of the background in the photo being the defendant's apartment. Accordingly, the evidence was properly authenticated and admissible under FRE 901(a).

VI. Sixth Amendment

B. Confrontation Clause

U.S. v. Mallory, 17-3500 (8/30/18)

At the defendant's trial for fraud and identity theft, the government sought to introduce the deposition testimony of a witness who was bedridden and suffering from dementia. The district court admitted the testimony, and the defendant argued on appeal that his rights were violated under the Confrontation Clause. First, the court held that the deposition testimony was admissible because the government had fairly established the witness' unavailability. The court noted that medical records showed that the witness' health had significantly deteriorated after the taking of the deposition, he had been hospitalized repeatedly, and he had a dementia diagnosis. Second, the court found that the defendant's counsel had sufficient time to prepare and a meaningful opportunity to cross examine the witness at the time of the deposition. The defendant had a two month time period to prepare for the deposition. The court ruled that this time period was sufficient. Further, the defense was unable to show any detriment to its cross examination as a result of alleged withholding or belated disclosure of discovery by the government. Accordingly, admission of the deposition testimony was affirmed.

VIII. Defenses

H. Sufficiency of Evidence Generally

Rule 33 – Motions for New Trial

U.S. v. Mallory, 17-3500 (8/30/18)

The defendant was convicted of fraud and identity theft after a jury trial and he moved for a new trial under Fed. R. Crim. P. 33. The district court denied the motion but applied the standard for a Rule 29 motion, which is made at the close of the government's case: whether any rational trier of fact could find the elements of the crime beyond a reasonable doubt. On appeal, the court held that the correct standard for a Rule 33 motion for a new trial is whether the verdict was against the manifest weight of the evidence. It requires a district court to take on the role of a juror and weigh the evidence in order to ensure that there

was not a miscarriage of justice. The court ruled that because the district court applied the incorrect legal standard, the court was required to remand the case in order for the district court to make this determination in the first instance.

X. Probation/ Supervised Release

Re-imposition of Supervised Release

U.S. v. Price, 17-2432 (8/28/18)

The defendant was convicted of bank robbery and violated his first term of supervised release. The district court imposed 2 months imprisonment and an additional period of supervised release. Upon the defendant's second violation of supervised release, the court imposed a sentence of 24 months in prison and 12 months of supervised release. On appeal, the defendant argued for the first time that the 12 month term of supervised release was too long. The court held that the district court committed plain error in imposing the term of supervised release after imprisonment. The court found that, pursuant to 18 USC § 3583(h), the court must subtract any terms of imprisonment on any supervised release violation related to the same underlying offense from the term of supervised release imposed after a violation. Thus, the district court was required to reduce the new term of supervised release by 2 months for the first violation and 24 for the second violation. Accordingly, given that the maximum term of supervised release was 36 months, the court was required to credit 26 months against this term, leaving only 10 months of supervised release. As such, the case was remanded to amend the supervised release term from 12 months to 10 months.

XI. Appeal

Scope of Remand

U.S. v. Woodside, 17-5125 (7/18/18)

The defendant was convicted of participating in a conspiracy to distribute pain pills. In his first appeal, the court remanded the case in order for the district court to make more specific findings of fact regarding the drug amount attributable to the defendant for purposes of the guideline calculation. On remand, the district court declined to hold another sentencing hearing, but instead reviewed the testimony that had already been presented, made specific findings regarding drug quantity, and issued the same sentence. The defendant again appealed and argued that the district court was required to hold a new sentencing hearing with the defendant present. The court held that the original remand of the case was a limited remand, only for the purposes of providing reasons for the district court's drug amount computation. Specifically, the court noted that in its remand language, it stated: "We vacate the defendant's sentence, and remand to the district court for a recalculation of the drug quantity attributable to defendant." Because this language created a limited (as opposed to general) remand, the district court was not required to hold another full sentencing hearing with the defendant present. Thus, the sentence was affirmed.

U.S. v. Charles, 18-5318 (8/23/18)

The defendant applied for and received a reduction in sentence under 18 USC § 3582. The government appealed this decision and the court reversed, finding that because the defendant was a career offender under the guidelines, he could not qualify for a reduction. At resentencing, the defendant argued that the original sentence (35 years) was illegal, because when the defendant was originally sentenced in 1996, the judge (and not the jury) made findings that increased the

maximum term from 20 years to life. The district court rejected this argument. On appeal, the court agreed that, under current law, the sentence was "illegal"; however, it was beyond the scope of the court's authority under 18 USC § 3582, and under the limited remand from the prior appeal, to be able to correct the sentence.

XII. Specific Offenses

18 USC § 922(g) – Firearms

U.S. v. Farrad, 16-5102 (7/17/18)

The government learned through investigation that the defendant had posted a number of pictures on Facebook with what appeared to be a gun. As a result, the government charged the defendant with being a felon in possession of a firearm. At trial, the government presented a custodian of records from Facebook who authenticated the photos. Further, an officer testified that the gun appeared to be a real gun based on markings, ridges, and serrations. The officer also identified the defendant's apartment in the background of the pictures. Upon his conviction, the defendant appealed the sufficiency of the evidence. The court held that, based on the unique circumstances of the case, the evidence was sufficient to support the verdict. The court found that, even though there was no physical evidence that the defendant possessed a gun, the verdict was supported by the following: the clarity of the pictures which depicted the defendant, the identification of the defendant from the Facebook account, and the "exceedingly meticulous" testimony about the identification of the firearm. Accordingly, the conviction was affirmed.

18 USC § 1347 – Health Care Fraud

U.S. v. Bertram, 17-6527 (8/20/18)

The defendants owned a drug testing lab that contracted with doctors to test urine samples. The lab began taking samples from doctors, but it was not actually functional to begin testing the samples until 7-10 months later. Nonetheless, the lab billed the insurance companies for the testing without disclosing that the testing was being conducted much later than the urine collections. The defendants were convicted in the district court for health care fraud for failing to disclose that the drug tests were no longer medically necessary at the time the testing was finally completed. On appeal, the court held that a defendant may be convicted of health care fraud for "the omission of material facts" in a health care claim. Although the insurance company did not ask for the dates of the urine sample collections, the court found that the omission of the dates was material because the insurer testified at trial that it would not have paid the claims had it known the dates. Further, there was evidence that the defendants knew that the lab testing was no longer "medically necessary" at the time it finally performed the testing and billed the insurance company. Accordingly, the conviction was affirmed.

39 CFR § 232.1(e) – Postal Disturbance

U.S. v. Nakhleh, 18-1107 (7/17/18)

The defendant was convicted after trial of "committing conduct that creates a loud and unusual noise in a post office or that otherwise impedes or disturbs postal operations," in violation of 39 CFR § 232.1(e). On appeal, the defendant argued that the "loud and unusual noise" component of the offense required proof that it was loud and unusual for the defendant himself. The court held that the CFR did not require proof as to whether the conduct was loud and unusual for the defendant himself, but instead whether it was loud and unusual for the particular place, i.e., the post office. The court found that this reading was consistent with the title of the CFR – Disturbances – and with the remaining language of the CFR which required

consideration of whether the disturbance impeded or disturbed postal operations. Further, the court ruled that this interpretation of the CFR did not invite arbitrary and discriminatory enforcement. Accordingly, the defendant's conviction was affirmed.

XIII. Post-Conviction Remedies

Harrington v. Ormand, 17-6229 (8/13/18)

Harrington was sentenced to life in prison under the death-results penalty enhancement (21 USC § 841(b)) in the Southern District of Iowa. After his conviction became final, the Supreme Court decided Burrage v. U.S., and Harrington argued in a 28 USC § 2241 petition that he was "actually innocent" of the "death results" penalty enhancement. The Court determined that Burrage applied retroactively to cases that were already final, and that Harrington had made a sufficient showing of actual innocence of that penalty provision such that the case should be remanded for an evidentiary hearing.

Raines v. U.S., 17-1457 (7/31/18)

After the Supreme Court's decision in *Johnson*, the defendant filed a habeas petition arguing that his prior federal conviction for "collecting credit by extortionate means" no longer qualified as a violent felony for ACCA purposes. The government argued that, because the defendant could not prove that the original sentencing judge relied on the (now defunct) residual clause in making the ACCA determination, the defendant was not entitled to habeas relief. While the appeal was pending, the Court decided Potter v. U.S., which seemingly decided the matter against the defendant. However, the court in Raines limited Potter in two significant ways. First, it held that Potter only applied to second or successive habeas petitions. Second, the court held that Potter was fairly unique, in that the same judge that originally sentenced the defendant in Potter also handled the habeas petition, and thus was in a position to know whether the residual clause was invoked. The Court ultimately determined that Potter did not control and that the Court could proceed to the merits of the 2255 claim.

Slusser v. U.S., 17-5070 (7/10/18)

After the Supreme Court's decision in *Johnson*, the defendant filed a habeas petition arguing that several of his prior convictions no longer qualified him under the ACCA. But the defendant had a plea agreement which precluded him from filing a habeas petition under 28 USC § 2255. The Court found that, despite the viability of the Johnson claim, his otherwise valid plea agreement precluded him from seeking habeas relief.

Ayers v. Hall, 17-5038 (8/22/18)

The petitioner was an experienced criminal defense attorney who was convicted of tax offenses in Kentucky state court. The petitioner represented himself for twenty-one months before trial, but "never formally elected to do so" by waiving his right to counsel on the record, or taking any similar action. The petitioner requested a continuance the day before the trial to hire an attorney, but the motion was denied and the petitioner was forced to proceed pro se. The Kentucky Supreme Court upheld the petitioner's conviction, concluding that an express waiver of counsel was unnecessary under the circumstances. The Sixth Circuit concluded that the state court decision was contrary to clearly established United States Supreme Court precedent, and as a result no deference was warranted under 28 USC § 2254(d). Because the record was "devoid of any indication that Ayers

was told of his right to counsel or that he affirmatively declined to exercise that right," habeas corpus relief was granted.

Carter v. Bogan, 16-3474 (8/20/18)

The petitioner was convicted of aggravated murder in Ohio state court and sentenced to death. A competency hearing was held prior to trial after the petitioner repeatedly attempted to commit suicide while in custody. The petitioner entered a plea of not guilty by reason of insanity, and a second competency hearing was held after a defense expert conducted an interview with the petitioner in preparation for trial. The trial court again concluded that the petitioner was competent. During trial the petitioner's conduct was so disruptive that he was required to observe the proceedings by television in a separate room. The state courts nevertheless rejected the petitioner's claims regarding his competence to stand trial. The Sixth Circuit concluded that the state court determinations were entitled to deference under 28 USC § 2254(d), and as a result the denial of habeas corpus relief was affirmed.

Davis v. Bradshaw, 17-3262 (8/16/18)

The petitioner was convicted of aggravated murder in Ohio state court and sentenced to life in prison. After the denial of his first federal habeas petition, the petitioner was granted authorization to file a second or successive petition alleging knowing use of perjured testimony and suppression of exculpatory evidence by the prosecution. The petitioner's claims were based in large part on the recantation of the prosecution's primary witness at trial. The district court subsequently denied the petition on various procedural grounds. The Sixth Circuit affirmed, concluding that the petition was barred by the statute of limitations, and that the petitioner failed to establish his actual innocence so as to entitle him to the equitable exception to the limitations period set out in McQuiggin v. Perkins, 569 U.S. 383 (2013).

English v. Berghuis, 16-2676 (8/21/18)

The petitioner was convicted of a sex offense in Michigan state court. Following trial, the petitioner alleged that his right to an impartial jury had been violated because one of the jurors failed to disclose that she had been sexually assaulted in the past. The state courts rejected the petitioner's claim under a state law standard that was less protective than the applicable federal law, and as a result there was no adjudication "on the merits" requiring the application of 28 USC § 2254(d). On de novo review, the Sixth Circuit concluded that the petitioner's right to an impartial jury had been violated, and reversed the determination of the district court to the contrary.

Gilmore v. Ebbert, 17-5710 (7/17/18)

The petitioner was in federal custody when South Carolina filed a detainer against him. The petitioner subsequently filed a federal habeas corpus petition in South Carolina alleging that his rights under the Interstate Agreement on Detainers Act had been violated. The petition named the petitioner's then-current warden in Kentucky as respondent. The district court in South Carolina concluded that it did not have personal jurisdiction over the warden and transferred the case to Kentucky; the Kentucky district court dismissed based on lack of exhaustion. The Sixth Circuit affirmed on the ground that the petitioner had named the wrong respondent. When a petitioner raises a challenge to future custody, the correct respondent is the state court that exercises legal control with respect to the challenged custody. The case was therefore dismissed without prejudice to the petitioner's right to refile a new petition in South Carolina naming the correct respondent.

Lobbins v. U.S., 15-6386 (8/21/18)

The petitioner was convicted of witness tampering in federal court. The petitioner subsequently filed a motion to vacate under 28 USC § 2255 alleging that his trial lawyer had been ineffective in failing to object to a jury instruction that misstated one of the elements of the offense. The Sixth Circuit found that trial counsel performed deficiently in failing to object to the instruction, and further concluded that it was reasonably probable that the error had been prejudicial. The denial of relief was therefore reversed.

Robinson v. Woods, 16-2067 (8/24/18)

The petitioner was convicted of various offenses related to drug trafficking in Michigan state court. At sentencing, the trial judge relied on his own factual findings to increase the petitioner's mandatory minimum sentence. The state courts rejected the petitioner's Sixth Amendment claim. Under Alleyne v. United States, 570 U.S. 99 (2013), any fact that increases a mandatory minimum sentence must be submitted to a jury and proven beyond a reasonable doubt. As a result, the state court determination was "contrary to" clearly established United States Supreme Court precedent, and no deference was warranted under 28 U.S.C. § 2254(d). The district court's denial of relief was accordingly reversed.

Thomas v. Stephenson, 16-2301 (8/6/18)

The petitioner was convicted in Michigan state court of various crimes relating to a home invasion, including assault with intent to commit murder. On direct appeal, the petitioner alleged that the evidence was insufficient to support his conviction of assault with intent to commit murder, but the state court concluded that the evidence was constitutionally adequate. The petitioner raised his claim again in federal habeas corpus proceedings. Under Jackson v. Virginia, 443 U.S. 307 (1979), a challenge to the sufficiency of the evidence must be rejected if any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. Furthermore, if a Jackson claim was previously denied on the merits by the state court, the petitioner must overcome an additional layer of deference under 28 USC § 2254(d). The Sixth Circuit concluded that the state court's rejection of the petitioner's claim was entitled to deference under § 2254(d), and as a result the denial of habeas corpus relief was affirmed.